

Exhibit 131

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdcc.ca.gov>
Sent: Monday, September 18, 2017 5:37 PM
To: Carr, Chris; Vickers, Kevin
Cc: Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Request for Extension of Time to File Statement of Defense in BCDC Enforcement File No. 2010.013 re Mark Sanders and Westpoint Harbor

Importance: High

Chris,

In response to the request for an extension of time that you submitted on August 17, 2017, on August 18, the Executive Director granted Respondents a 28-day extension of time to submit their statement of defense in this matter. Under that extension, Respondents statement of defense is due by no later than September 25, 2017. Last Friday, September 15th, Respondents submitted a second request for an extension of time, as set forth in your email, below.

After due consideration of your second request for an extension, pursuant to 14 CCR 11322(f), the Executive Director grants Respondents a second extension, of an additional 25 days, of the time limit set by 14 CCR 11322(a) and (c) to submit their statement of defense. Respondents statement of defense shall be submitted by no later than October 20, 2017. The hearing before the Commission's Enforcement Committee will be rescheduled for November 16, 2017 (at 9:30 a.m.).

The Executive Director does not find that Respondents have demonstrated good cause for a second extension of time based on the substantial scope of the enforcement action. In that regard, we note that over a seventh-month period, from January through July 2017, your co-counsel, David Smith engaged in numerous discussions with me and other BCDC staff regarding the alleged violations and the factual and legal issues raised by the enforcement action. Nevertheless, the Executive Director has granted a second extension of time because BCDC staff has not yet fully responded to your Public Records Act request. For your information, we expect to be able to complete our response to the PRA request within the next few days.

This morning you submitted a letter proposing that Respondents would submit a "Sign Drawing" and a "Furnishing Drawing" by no later than December 15, 2017, if the Executive Director would grant Respondents an extension of at least 60 days. Respondents' proposal is inadequate and unacceptable for a number of reasons. First, Respondents have proposed to submit a drawing showing the existing locations and contents of signs, rather than showing all signs required to be installed pursuant to the permit. Second, Respondents propose to submit drawings of signs and furnishing "previously approved on behalf of the Commission," when, in fact, neither a signage plan nor a site furnishing plan has been approved on behalf of the Commission. Third, when I asked during our call last Friday whether Respondents would make a proposal to take steps to address some of the alleged violations in conjunction with their request for an extension, the request was for actions that Respondents would propose to take during the extension period, but Respondents have not proposed to submit their Sign and Furnishing Drawings for approximately 90 days, one month beyond their requested 60-day extension. Fourth, and on a related point, given that Mr. Smith informed me in mid-July that Mr. Sanders was endeavoring to retain a landscape architect to complete required plans as required by the permit, Respondents have provided no justification as to why it would take an additional 90 days to submit their proposed Sign and Furnishing Drawings. Finally, in proposing to submit only their Sign and Furnishing Drawings, as described in your letter, Respondents have not made a reasonable proposal to demonstrate efforts to come into compliance with the numerous outstanding alleged violations.

Although we reject the proposal set forth in your September 18th letter, BCDC staff encourages Respondents move forward prior to submission of their statement of defense to begin to address the outstanding violations and attempt to narrow the issues in dispute with respect to Respondents' noncompliance with the permit. Please contact me if you would like to pursue such discussions.

Regards, Marc

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From: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>

Date: Friday, September 15, 2017 at 12:11 PM

To: Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>

Cc: "Ogata, Gregory@BCDC" <gregory.ogata@bcdc.ca.gov>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>

Subject: RE: Request for Extension of Time to File Statement of Defense in BCDC Enforcement File No. 2010.013 re Mark Sanders and Westpoint Harbor

Marc:

Pursuant to 14 CCR 11322(f), Mark Sanders and Westpoint Harbor, LLC ("Respondents") request an extension of the September 25, 2017, deadline for submitting Respondents' statement of defense in response to the Violation Report/Complaint ("VR/C") for the Imposition of Administrative Civil Penalties (Enforcement Investigation No. ER2010.013) against Mark Sanders and Westpoint Harbor, LLC. As noted in my August 18 email to you, Respondents maintain that the 28-day extension granted by the Executive Director (setting the current deadline of September 25) is unreasonable in light of the facts that were described in the extension request of August 17, and that a longer extension is supported by good cause. For all the reasons previously described in my August 17 email and my two August 18 emails on this topic (attached), as well as BCDC's incomplete response to Respondents' request for public records under the California Public Records Act ("CPRA"), and other good cause, Respondents request that the deadline to file the statement of defense be extended to 60 days from the date that BCDC fully complies with Respondents' CPRA request. Respondents also request that the hearing date be moved accordingly to reflect the new deadline to file the statement of defense. Respondents have already agreed to waive the 60-day deadline for conducting a hearing under Government Code 66641.6(b).

Substantial scope of this enforcement action

My email to you on August 17 described the substantial scope of this enforcement action, in terms of amount of the proposed penalty, the duration of the relevant time period, and the volume of relevant facts:

The VR/C alleges almost nine years of violations of BCDC Permit No. 2002.02 and the McAteer-Petris Act, going back to September 2008, and it seeks a total proposed penalty of \$504,000. Listed on Exhibit D of the VR/C, there are 35 separate enumerated violations with specified penalty amounts sought, but even that large number does not capture the full quantity of alleged violations. Multiple of the enumerated violations are amalgamations of factually distinct allegations that require separate and discrete responses. For example, alleged Violation No. 14 asserts "[n]umerous instances of

unauthorized placement of fill and/or substantial change in use” and lists eight distinct bullets referring to eight wholly different alleged violations of the McAteer-Petris Act.

The history regarding development of the Westpoint Harbor marina goes back almost 30 years, to the late 1980s. The BCDC permitting proceedings alone go back more than 15 years. There have been multiple versions of the permit, all of which bear on the alleged violations in the VR/C.

The text of the VR/C, excluding 12 pages of exhibits, is 41 single-spaced pages in length and contains well over 1,000 alleged statements of fact. The Administrative Record offered in support of the VR/C contains 94 enumerated documents, many of which themselves contain additional documents. There are more than 865 pages within the 94 enumerated Administrative Record documents.

The VR/C cites numerous meetings and conversations occurring over a period of several years between Respondents and BCDC staff, during which facts and circumstances which are relevant to Respondents’ defense to the alleged violations were discussed. In order to properly respond to the allegations, Respondents will need to interview and be prepared to submit testimony from third-party witnesses (such as Charles Jany from Redwood City) and to designate for cross-examination a number of witnesses (such as Brad McCrea and Andrea Gaffney from BCDC staff). Other important witnesses include former BCDC staff, such as Tom Sinclair and Ellen Miramontes. Based on preliminary research, it appears that such witnesses may no longer live in the San Francisco Bay Area, and it will take time to attempt to locate and contact them. Note that Tom Sinclair and Ellen Miramontes are authors or recipients of dozens of the documents contained in the Administrative Record BCDC has proffered. Respondents cannot reasonably be expected to do this without the benefit of additional time to prepare.

The same email also explained that these issues were compounded by the fact that Respondents’ present counsel have only worked for Respondents for a short time:

Respondents’ counsel in this matter are new to this matter and have not had the benefit of representing Respondents throughout the more than 15 years of interactions with BCDC. Respondents’ previous counsel, Doug Aikins, was closely involved in discussion with BCDC regarding some of BCDC’s allegations going back to at least 2011. However, as you know, Mr. Aikins passed away, and Respondents’ current counsel does not have the benefit of his experience and knowledge concerning BCDC’s allegations.

All of these points were reiterated in my email to you on August 18. As you stated in your August 18 email, the Executive Director recognized good cause for an extension given “the detailed factual allegations in the Violation Report/Complaint for the Imposition of Administrative Civil Penalties” and “the large number of violations, of many different conditions and requirements of the BCDC permit for Westpoint Harbor, alleged in the Violation Report/Complaint.”

BCDC’s incomplete response to CPRA request

In addition, BCDC’s response to the CPRA request remains incomplete. Respondents submitted to BCDC a CPRA request for public records related to Enforcement Investigation No. ER2010.013 to ensure that a proper statement of defense could be prepared. Because, in the course of reviewing the records that were produced, it became apparent that not all documents responsive to this CPRA request were provided, Respondents sent a letter on September 7 requesting full compliance with the CPRA. The letter requested disclosure of specific

public records, documents to be provided in native electronic format, and a privilege log for documents withheld on the basis of the attorney-client privilege, attorney work product doctrine, and deliberative process privilege. In addition, the letter contested the exemptions that BCDC had claimed in withholding an unspecified number of documents. To date, multiple of those issues and others remain unresolved.

Your September 12 letter stated that you had “not been aware that Andrea Gaffney has former Bay Design Analyst Ellen Miramontes’ electronic file for Westpoint Marine in her – Andrea’s – staff folder. I will review Ellen’s file within the next few days and we will produce all documents in that file that are not privileged or otherwise exempt from disclosure (if any).” Yesterday, your email stated that you had not “had a chance to review Ellen Miramontes’s electronic file for Westpoint Harbor, but plan to do so shortly.” Given the impending deadline for submitting the statement of defense, Respondents cannot reasonably be expected to properly review and use any documents obtained from Ellen Miramontes’ file by the time BCDC is able to produce them. Equally important is the fact that Respondents were not initially aware that there were “staff folders” containing electronic files that may be responsive to their CPRA request. The existence of such staff folders was only discovered by the fact that Andrea Gaffney’s staff folder was referenced in an email that was disclosed. As you indicated that you had “not been aware” of Ellen Miramontes’ electronic file in one such staff folder, this raises the question whether other BCDC staff folders have been reviewed in response to Respondents’ CPRA request for records. If so, it does not seem that files from such folders have been produced.

In addition, as of yesterday, BCDC has now provided digital photos taken by Adrienne Klein during a site visit on May 19, 2010, and by Andrea Gaffney on December 8, 2016 and April 17, 2017. Many of these photos were not made available before either in BCDC’s initial response to the CPRA request or in the Administrative Record (“AR”) accompanying the VR/C. This similarly raises the question of why these photos were not provided before and whether BCDC has searched and provided electronic files as requested.

Respondents also note that BCDC incorrectly withheld at least one document on the basis of privilege. The redacted version of AR Document 14 contains a handwritten notation indicating “Attorney-Client Privilege.” After Respondents questioned this designation, you stated in your September 12 letter that the redacted section was not privileged after all and, yesterday, BCDC produced the unredacted document. This raises the possibility that other documents are likewise being wrongfully withheld under an improper assertion of privilege. Respondents are aware of some claims of attorney-client privilege that are not, on their face, obviously appropriate. For example, I have attached a scan of a “Privileged Material” sheet obtained from BCDC hardcopy records that indicates an email between Adrienne Klein and Andrea Gaut, “et al.” is privileged. Unless one of the undisclosed recipients was a BCDC attorney and the communication concerned the provision of legal advice, it appears this email is not actually privileged. In my September 7 letter to you, I requested on behalf of Respondents that that BCDC provide a privilege log for records that have been withheld on the basis of the attorney-client privilege, attorney work product doctrine, and/or deliberative process privilege, in order to show that such records were properly withheld. BCDC has not provided such a privilege log.

Lastly, there are other deficiencies with regards to your disclosure of public records:

- You stated in your email yesterday that you have requested retrieval of audio recordings of Commission meetings in 2003, and “should receive it early next week.” Given the deadline for submitting the statement of defense, Respondents cannot reasonably be expected to be able to properly review, transcribe, and use these audio recordings by the time you are able to produce them.

- You stated in your email yesterday that you are consulting with your IT staff about providing emails in an electronic format. Again, given the deadline for submitting the statement of defense, Respondents cannot reasonably be expected to be able to make use of this information by the time it is produced to Respondents.
- You stated in your September 12 letter that you would address other issues raised in Respondents' September 7 letter "early next week," which presumably includes Respondents' concerns about the exemptions you claimed in withholding an unspecified number of documents. This will not provide Respondents sufficient time to address your answer and possibly obtain responsive documents.
- You stated in your September 12 letter that you would revise the AR index, as well as the AR itself, in order to fix the errors identified in our letter. (Items 2 and 4 in your letter). Respondents have not received a revised version of either. Therefore, Respondents are unable to correctly cite to the AR in their statement of defense.
- The copy of AR Document 19 you provided appears to be missing pages. (Item 2).
- The copy of the dock plans received on March 5, 2007, does not show the date-stamp on the backs of the pages. (Item 10). Similarly, the copy of the marina manual does not show the date-stamp on the backs of the pages. In an email Kevin Vickers sent to you on August 15, he specifically requested copies of the backs of documents when there were any markings.

Given the facts described above, BCDC cannot reasonably expect that Respondents can adequately respond to the VR/C in the remaining 10 days that have been provided. Therefore, Respondents request the deadline to file their statement of defense (including declarations, a list of individuals Respondents wish to cross-examine, and supporting documentation) be extended to 60 days from the date that BCDC fully complies with Respondents' CPRA request, in order to allow time for Respondents to properly review responsive documents after they have been produced. Respondents also request that the hearing date be moved accordingly to reflect the new deadline to file the statement of defense.

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From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdca.gov>]

Sent: Thursday, September 14, 2017 12:45 PM

To: Carr, Chris; Vickers, Kevin

Cc: Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC

Subject: Response to Baker Botts

Chris and Kevin,